DOCUMENT RESUME

ED 061 612 EA 004 200

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TITLE Collective Negotiations: "Why Didn't Someone Tell Me?"
PUB DATE 15 Feb 72
NOTE 10p.; Paper presented at American Association of School Administrators Annual Convention (104th, Atlantic City, New Jersey, February 12-16, 1972)

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Administrative Principles; Administrator Guides; *Collective Negotiation; *Negotiation Agreements; Negotiation Impasses; Speeches; *Teacher Associations; Teacher Militancy; *Teacher Strikes

ABSTRACT

This speech presents a brief history of public sector collective negotiations and compares collective negotiation to private sector bargaining. The author points out that, unlike private collective bargaining, the public association or union cannot put the employer out of business; therefore, a strike or a strike threat is no longer a viable weapon in the arsenal of the teachers' association. The author suggests that school boards adopt a policy of "modified Boulwarism" -- based on the negotiating tactics of a General Electric vice president in the 1940s. Under such a plan, a school board would present the teachers' association with a carefully considered and researched offer that fell within the goals of the school system. The school board would consequently make very few changes at the bargaining table unless the association, on the basis of research, could show that the offer was inadequate or undesirable in any aspect. According to the author, this method precludes unseemly gamesmanship in which both sides make many demands and charge each other with irresponsibilities. (Author/JF)

ED 061612

COLLECTIVE NEGOTIATIONS: "WHY DIDN'T SOMEONE TELL ME?"

AASA Convention, February 15, 1972

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It was only a short decade ago that the first truly significant election was held (in New York City) to determine who would represent teachers in the collective bargaining process with a board of education. To many of us in this audience that occurrence seemed rather remote at the time -- something which might happen in Fun City but would not have a direct impact on us.

Today more than 30 states have complicated bargaining laws for teachers; some school systems in all 50 states engage in bargaining processes. In many states, such as mine, all school systems are required to participate in the collective bargaining process. The great majority of American teachers is covered today by collective bargaining agreements -- or if you still prefer more euphemistic terms -- professional negotiations or collective negotiations agreements.

Yet, I still hear colleagues wistfully express the hope that we can go back to the "good ol' days" when we were one big happy educational family, when the NEA symbolized this togetherness by regularly alternating a superintendent of schools and a classroom teacher as president.

In the words of Thomas Wolfe, "We can't go home." We must realistically accept collective bargaining in public education as a way of life; learn to live with it; and help to shape it so that it continuously becomes a more positive process. We must face the fact that collective bargaining is admittedly an adversary process. This adversary nature of the collective bargaining process in public education was probably blown out of proportion because of the unhappy circumstance of time. Collective bargaining in public education experienced its greatest growth in the late 1960's -- a general era of dissent and

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demonstration in this nation unparalleled since the Civil War.

Within the last month, I read the following headlines in the Baltimore Sun and the Wall Street Journal, respectively: "Campus activists now trying to change the system from within," and "Joining the system -- for many in ghettoes violence loses appeal as means of protest." The NEA reports that during the 1970-71 school year the number of strikes by teachers declined for the first time in nine years -- in fact, a significant decrease of 28 percent. My point is -- incurable optimist that I am -- that the era of explosive dissent of the late 1960's appears to be giving way to one of rational, yet determined, advocacy. Additionally, the process of collective bargaining in public education appears to be maturing quite rapidly. This development is rather remarkable in view of the fact that we have had serious collective bargaining in public education for less than a decade, while experience in the private sector under the Wagner Act now totals 36 years.

We can learn much by studying the collective bargaining experience in the private sector; we can be sure that this lesson has been studied thoroughly by the NEA, the AFT, and their state and local affiliates. Before adapting private sector bargaining practices lock, stock and barrel, however, we should pause to remember that much of the collective bargaining experience in the private sector has been bad. Private sector practices have been profoundly influenced by decisions of a pro-labor National Labor Relation Board -- an institution which currently shows signs of taking on a pro-management hue. Of course, public school systems are not under the jurisdiction of the NLRB and, therefore, are not directly affected by these decisions. Thus, we should not voluntarily apply private sector practices which were developed because of unfavorable NLRB decisions. The famous General Electric case on the subject of Boulwarism is an example which I will treat in some detail shortly.

In my opinion, the fundamental difference between private sector bargaining and public sector bargaining is found in the power bases from which the management bargaining team and the employee organization bargaining team operate. The nature of power bases in the private and public sectors are so different that this affects the whole character of the process. In the private sector the employer and the union both come to the bargaining table with potentially unlimited power or clout. Theoretically, the company has the ultimate power to say "no" to all union demands. Theoretically, the union has the ultimate power to put the company out of business by withholding the services of the work force. It is not very often that this type of power can be, or is, exercised, and the result more likely is productive collective bargaining. The union can only push so hard, or it causes the ultimate defeat -- the permanent loss of jobs for its members, because the company is out of business. The company can only go so far in granting union demands, or it becomes non-competitive because of production costs, and it must then relocate or go out of business. Both the union and the company will naturally avoid these extremes and as they do bargaining will occur.

A school board and the recognized association (or union -- as the case may be) also operate from power bases, but these are power bases which are entirely different from those which I have sketched and oversimplified a few minutes ago for the private sector. We must never lose sight of the fundamental difference between private sector and public school bargaining. The association or union can not put the employer out of business. In fact, if the school board has taken a strike over a money issue, the striking teachers are alleviating the employer's problem by saving payroll costs every day that the strike persists. This is particularly devastating to the teacher organization's cause when the school district is fiscally dependent! Obviously, in this process the employer does not have to worry about profit losses or unhappy stockholders, as is the case in the private sector. Additionally, the community will assure and demand the

continuance of a system of public education. Once we grasp this fundamental concept, the strike, or threat of strike, is no longer a viable weapon in the arsenal of the teachers's organization.

I am not naive enough to think that strikes will no longer occur in public school systems -- despite their illegality in all states but Hawaii and Pennsylvania. I merely say that they shouldn't work if we approach the problem cooly and intelligently. (Incidentally, the AASA, NAESP, and NASSP have recently published a strike survival kit entitled, "Work Stoppages and the School Administrator," which I commend to your attention.) The administrative staff should be apprised of the board's attitude regarding strikes and the steps which should be taken if a strike is threatened. Naturally, it is better to conduct this staff briefing at a time when the threat of a strike is not present.

Does this mean then that teachers' associations are impotent at the bargaining table and that the chief negotiator for a board of education can merely offer a resounding "no" to each demand? The answer to this question is clearly in the negative, because the teachers' organization does indeed have a power base from which to operate. Ironically, this power will help school boards achieve what they have always wanted and have pushed for since school systems were first established in this country -- higher salaries to attract better teachers, better staffing to teach children more effectively, improved and more adequate instructional supplies, expanded auxiliary services, etc.

Negotiators for boards of education must guard against overreaction to sometimes absurd demands of teachers' associations which are accompanied by charges of paternalism, neglect, administrative ineffiencies -- and many other wild comments carefully calculated to make the back of your neck turn red. As a negotiator for a school board you can not overuse your power to say "no" to teacher organization demands to the point where your "victories" are moves which

hurt the school system -- e.g. holding down salary and fringe benefits to the point where your personnel office is hurt in its recruiting efforts. Try explaining to your PTA Council the "victory" in saying "no" to staffing demands when the PTA aim of the year happens to be smaller classes.

In preparing for bargaining -- a year-round process obviously -- we should begin with the premise that the resulting agreement must be within the parameters of the goals and objectives of the school system. Every demand you accept -- every offer you make -- should pass this basic test: does it help the school system achieve its goals or objectives?

Back in the 1940's, Lemmuel Boulware, a vice-president of the General Electric Company, developed a concept in the private sector which began on this very premise. Under this system of bargaining, which appropriately became known as Boulwarism, General Electric prepared for bargaining with the union by preparing what they believed to be a final offer in the "balanced best interest" of stockholders, employees, customers, vendors, and the public. General Electric looked upon this as a carefully researched and considered offer and usually made little or no change at the bargaining table. The company looked upon Boulwarism as a process of "doing right voluntarily" and took great pains to communicate these "right" positions to employees. The union objected to this approach as a thwarting of the bargaining process and accused General Electric of using a "take it or leave it attitude." Boulwarism was ruled illegal in the 1960's by the NLRB, a decision later upheld by the Supreme Court, on the "totality of conduct" by General Electric in the collective bargaining process. It is a good question whether Boulwarism would survive another look today by the NLRB or the Supreme Court(in light of their present composition).

As I indicated previously, NLRB rulings place no restrictions on a board of education, so I submit to you that it is appropriate to have a modification of Boulwarism in public school bargaining.

Now permit me to define what I mean by modified Boulwarism. The first advice you receive from your friends who have had experience in private sector bargaining is: "If the teachers come in with 50 demands, you go to the table with 50 management demands. Then you have some trading material." I am sure it isn't news to you that a teachers' organization would be perfectly capable of coming in the following year with 100 demands, thus you would need 100 demands for trading material. The result is that you will necessarily have to come up with some proposals which will look pretty silly to the representatives of the mass media and to forward-thinking people in the community. You would have an agreement which would embarrass your school system, <u>if</u> the association or union bargaining teams said at the initial session: "OK, we'll take your proposal and see what teachers think about it when they are asked to ratify it!"

Our first offer, as responsible representatives of a school board, should be one of which we would be proud and one which would improve our instructional program if it were accepted immediately by the association team. We should be able to say -- with a straight face: "Our offer is based on thorough research and on our experience with the existing agreement. We think it is fair to our employees. We believe it will enable us to improve the produce of our school system -- better educated pupils. This is not a first, last, or final offer if you (the association team) can show us -- on the basis of research -- that it is inadequate or undesirable in any aspect. Likewise, we (the board team) will be honest with you and will alter our proposal if during the course of negotiations we discover that our research-based offer should be updated and expanded because of subsequent developments in other similar school systems."

This is what I have termed modified Boulwarism. It is a considered best offer, based on research, falling within the objectives and goals of the school system. Yet, we are not saying to the teachers' organization "take it or leave

it." We are challenging the association to convince us that our carefully researched and considered best offer needs changing.

The basic advantage of this approach is that the image of the school system is enhanced. The board team starts and finishes from a posture of responsibility. What other institution has a greater responsibility of "doing right voluntarily"? Think of the converse -- if you begin with 50 demands, which you expect to achieve, and then engage in gamesmanship where you accuse the association of being irresponsible and the association charges the board with being archaic. The resulting internal and external public relations are horrendous.

This does not mean that the board team never makes demands. Quite the contrary -- but the demands should be limited to those which we honestly feel are good for the school system. For example, if you are going to grant an extra pay for extra duty provision for the first time, extract from the bargaining table a clear definition of regular duties of teachers and add to these duties, if in doing so you improve the operational ability of the school system. In making a moderate move toward extra pay for extra duty in our school system, we extracted as our part of the bargain the following list of regular duties; "Conducting a daily homeroom period; attending professional faculty meetings approximately once per week; supervising evening and night student activities approximately four times per year; sponsoring and/or supervising student interest groups for approximately one hour once a week; supervising students as needed before, during and after school in the building and on the playground on a regular duty roster basis; attending PTA meetings in accordance with established policy; attending evening or Saturday professional meetings approximately twice a year; and meeting with students, parents and other staff members as professional responsibilities require."

In the instructions I received from AASA for preparing this presentation was a suggestion that I include some "do's and don't's" of bargaining. I always warn a person new to the bargaining process not to follow blindly a checklist of do's and don't's which may be found in any textbook on collective bargaining. Frankly, I have a mental block against checklists, having always looked upon them as a "non-thinker's lazy method of operating," except in pursuing a basically mechanical task. (My aversion to checklists does not extend to the one the pilot is using as I enter an airplane!)

To avoid making this appear to be a complete cop-out on my part, I will attempt to present some suggestions for the person new to the bargaining process, in accordance with my instructions from headquarters. The first thing I would do if I had spent my career in another pursuit and suddenly faced the prospect of participating in collective bargaining would be to read a basic textbook or two on the subject of negotiating in the private sector. I would follow this with a couple of the fine books which have been published in recent years in the area of public school bargaining. Simultaneously, I would attend an in-depth conference on the subject such as those offered by AASA, the American Management Association, or a university with experience in this field. Also, I would meet periodically with colleagues who have like responsibilities in neighboring school systems.

Once I had saturated myself with this basic information about collective bargaining, I would approach the problem from the highest possible conceptual level, keeping in mind that the approach to be developed should enhance the goals and objectives of the school system.

The detailed approach to bargaining -- for example, where, when, and how long we meet; how we take notes; how we publish the results; how we administer the agreements, etc. -- will evolve in terms of what is satisfactory for our particular school system.

We must resign ourselves to the fact that the collective bargaining process will take a great deal of time and effort on the part of a key person in the administrative structure of the school system -- an administrator who has direct and open access to the superintendent of schools. This person, in turn, will need to involve in the process many people in the school system on a year-round basis. (Few school systems have as yet realistically faced the problem of bargaining with organizations of supporting personnel.)

In dismissing the teacher strike as an inadequate weapon, compared to its use by a union in the private sector, I may have conveyed the impression that the teachers' association (or the teachers' union) lacks a power base. Let me make it clear that I believe the teachers' organization may have the most powerful of operating stances -- the ability to make a school board do what is "right" both in terms of providing quality education and in treating its employees fairly and adequately.

It seems to me that the circumstances and the mood of 1972 encourage the rapid maturation of the bargaining process in public education. If we use a modified Boulwarism -- testing our research-based negotiating proposals on the bargaining table against the vigorous probing of the teacher team and making changes when our offers have been proved inadequate or unwise -- both sides will come away from the table with untarnished images. This is seldom the result when both sides start from ridiculous positions and approach a final level of reason after several weeks or months of gamesmanship.

In my opinion, collective bargaining was oversold to teachers in the late 1960's as a panacea for all of their problems -- particularly financial problems. There simply is no shortcut to building public support and acceptance of substantially increased school budgets. Silly spats during negotiating sessions have indeed thwarted this public relations effort. Conversely, a more matured, reasoned approach to collective bargaining can enhance the public relations task. Actually, once the bargaining session has ended without rancor and acrimony,

there is no reason that the board and the association cannot work together in the public relations effort which promotes the budget -- almost like the good ol' days!